

**Exhibit 17 to
Declaration of Srecko Vidmar
in Support of
Apple's Motion for Summary Judgment**

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Appeal No. 16-2004

SAMSUNG ELECTRONICS CO., LTD., et al.,

Appellant,

v.

STRAIGHT PATH IP GROUP, INC.

Appellee.

REPORTER'S TRANSCRIPT OF AUDIO PROCEEDINGS

June 23, 2017

ORAL ARGUMENT

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<p style="text-align: right;">13</p> <p>1 a hundred percent perfect accuracy. We do not believe 2 that that was a part of the claimed construction. 3 And, indeed, Straight Path didn't even defend that 4 position in its opposing brief. 5 FEMALE JUSTICE: Can I just ask you 6 before your time runs out, this is as an aside, the 7 one shout out you did get in SIPNET from the majority 8 was the suggestion that we haven't -- we're not saying 9 anything with regard to written description or 10 enablement, right? 11 MR. JACOB: Yes, ma'am. 12 FEMALE JUSTICE: Has that ever been at 13 issue? I mean, there's so many IPRs going on, and, 14 obviously, the IPRs aren't covering that. 15 Is there litigation pending in the 16 district court? Has anyone ever raised or adjudicated 17 the question of enablement description under this claim 18 construction? 19 MR. JACOB: There is litigation pending 20 in the district court, and that issue has not yet been 21 adjudicated, Your Honor. 22 I'll reserve the rest of my time. 23 FEMALE JUSTICE: Thank you. 24 MR. WODARSKI: Good morning. May it 25 please the Court.</p>	<p style="text-align: right;">15</p> <p>1 (unintelligible) have turned that in this notion of 2 perfection. That doesn't appear anywhere in any of 3 the proceedings below. 4 I think it should be somewhat 5 commonsensical that when you design a system to make a 6 determination, like the SIPNET panel said, it -- it has 7 to be accurate and reliable. That's the whole purpose 8 for the system. So it's designed to shrink or 9 eliminate that gap between actual and recorded -- 10 CHIEF JUSTICE: So you think that Judge 11 Dyk was wrong in his dissent when he said that the 12 majority opinion required absolute accuracy? 13 MR. WODARSKI: I think the system -- 14 This is what I think of Judge Dyk. My 15 answer to that is that Judge Dyk didn't get it right 16 for this reason: I think we and the SIPNET panel got 17 it right that the system has to be designed to always 18 return an accurate and reliable answer to the query. 19 The determination has to be reliable or else why design 20 the system. 21 What -- what Judge Dyk's dissent posited 22 was, well, if it requires this 100 percent, you know, 23 it doesn't require this 100 percent, actually, is 24 enough that I say I spoke to John five minutes ago, so 25 he must be at home. In other words, does an inference</p>
<p style="text-align: right;">14</p> <p>1 To echo what was said in the first 2 argument today, here we are again. 3 Chief Judge, you actually put it exactly 4 right, SIPNET does speak loudly and clearly. And -- 5 CHIEF JUSTICE: Can -- can we start with 6 where your friend on the other side left off, and that 7 is with the district court litigation? 8 Is it correct that -- that it says in 9 footnote 3 of the blue brief, or one of the blue 10 briefs, that -- that, in fact, in district court you 11 took a different position with respect to claim 12 construction? 13 MR. WODARSKI: No, Your Honor. Our -- 14 our position has always been consistently that "is 15 connected" means is connected at the time the query is 16 transmitted. 17 CHIEF JUSTICE: And that -- that there 18 could -- there is no infringement if they -- if it's 19 not accurate all the time? 20 MR. WODARSKI: What we have said 21 consistently, including in all these proceedings and 22 in the SIPNET appeal and all the proceedings that led 23 to that appeal, is that the system must be designed to 24 be accurate and reliable. Yeah. So I think the 25 difference here is that only appellant's counsel and</p>	<p style="text-align: right;">16</p> <p>1 alone satisfy the reliability of the system. And, no, 2 it doesn't. 3 If you had added to his hypothetical what 4 the patent actually calls for and the claim requires, 5 that, hey, I just spoke to John five minutes ago, and I 6 told him if for any reason he's going to go off line or 7 turn his phone off, just let me know, that -- 8 FEMALE JUSTICE: But -- but -- 9 MR. WODARSKI: -- that would be 10 different. 11 FEMALE JUSTICE: But putting that 12 analogy aside, then. So how -- how does it determine 13 if someone is on line if it's not been checking 14 registrations? I mean, you concede that all of the 15 embodiments refer to checking registration databases. 16 MR. WODARSKI: No, Your Honor. I mean, 17 I -- I -- I -- 18 That's why I think, actually, because 19 there was that discord between Judge Dyk and the -- the 20 other judges on the SIPNET panel, the majority of the 21 opinion actually discusses the specification to show 22 and demonstrate that it's not in any way in discord 23 with the opinion. 24 I mean, if -- they refer you to column 25 six and say, listen, what's happening is we have to</p>

<p style="text-align: right;">17</p> <p>1 know the computer has come on line is now an active 2 party ready for communication. 3 FEMALE JUSTICE: Right. 4 MR. WODARSKI: That's column five. 5 That's registration. 6 But then column six he goes on to, but 7 our system also has to track whether you are continuing 8 to stay on line. We either have to -- there has to be 9 some mechanism in the system to flag you as off line -- 10 FEMALE JUSTICE: Okay. What is the 11 mechanism? 12 MR. WODARSKI: Excuse me? 13 FEMALE JUSTICE: What's the mechanism? 14 MR. WODARSKI: There's many mechanisms, 15 Your Honor. One of ordinary skill in the art -- as 16 we -- we said to the panel below and mentioned in the 17 proceedings in SIPNET, there are many ways that you 18 could accomplish that, you know, pervasive connection, 19 constant ping-pong. One of skill in the art would know 20 that. 21 The issue in SIPNET and the issue that 22 controls here is that the claim plainly requires that 23 it track that online status so that it can meet the 24 determination at the time that the query is transmitted 25 to the server.</p>	<p style="text-align: right;">19</p> <p>1 and that enters into the city's database. It's odd 2 enough that they choose as a hypothetical a registry, 3 but they then that say if someone comes in and asks is 4 John living in the city, they will go to the database 5 of their records and provide the information from the 6 database. What they don't tell you is that will just 7 provide you the last known address of John. That is 8 not the query that these claims require. 9 FEMALE JUSTICE: Let me -- let me ask 10 you, and -- and I'm going to use some of your prior 11 statements against you here in this -- in this 12 question. So you can tell me why I -- I shouldn't or 13 why it's wrong. 14 MR. WODARSKI: Sure. 15 FEMALE JUSTICE: But -- but -- 16 So the board said that WINS and NetBIOS 17 don't disclose the is connected to. But they never 18 actually address whether or not what WINS and NetBIOS 19 do disclose might otherwise lead a person of ordinary 20 skill in the art to the point of understanding how to 21 do the ping-pong or all those things that you said were 22 commonly known in the art, and that you didn't have -- 23 that a person of skill in the art would understand. 24 So why isn't that a relevant question? 25 MR. WODARSKI: Because the -- as the --</p>
<p style="text-align: right;">18</p> <p>1 So, Your Honor, I just -- 2 MALE JUSTICE: Is running the same thing 3 as being on line? 4 MR. WODARSKI: Currently running would 5 be the same as being online status, being on line, 6 yes, Your Honor. 7 MALE JUSTICE: Okay. 8 MR. WODARSKI: So three things caught my 9 eye, Your Honor, that I just -- and I think the 10 colloquy between you and opposing counsel did a very 11 good job on these things, but three things quickly. 12 The appellants now say that they agree 13 that registration alone is enough. I'm taking that -- 14 that's clearly not true. That has never been their 15 position. 16 The simple reality is they must continue 17 to argue that registration alone is enough because 18 without it, they lose. There's know better example of 19 that then page 21 of their reply brief at Footnote 3 20 where they raise what they believe is a proper 21 hypothetical to understand why the prior art 22 invalidates the claims. 23 They say that there's a person that moves 24 to a city, John, the city registry, he goes and 25 registers his name and the address at which he lives,</p>	<p style="text-align: right;">20</p> <p>1 this Court in SIPNET said, the written 2 discrimination -- written description enablement issue 3 was not part of the (unintelligible) party's review 4 process. It was not part of the proceedings -- 5 FEMALE JUSTICE: I'm not talking about 6 written description or enablement. 7 I'm saying you said that -- that there 8 really wouldn't have been -- there wouldn't be a 9 problem on written description or enablement because 10 one of ordinary skill in the art would understand 11 exactly how to do it. 12 So I'm saying on a pure obviousness 13 analysis, if one of ordinary skill in the art would 14 understand exactly how to get from tracking register -- 15 whether they've registered or on line in the first 16 instance and continually ping-pong to make sure they're 17 still on line, if that's the case, why wouldn't that be 18 obvious? 19 MR. WODARSKI: Well, I -- I don't think 20 that's obvious, Your Honor. 21 I -- I -- I think the -- the thing that's 22 actually before us, though, is whether or not this 23 system, the board in considering the prior art systems, 24 whether or not they actually attempt to make the 25 determination required by the claims, and they don't.</p>

<p style="text-align: right;">25</p> <p>1 MR. WODARSKI: But it -- it completes 2 something that's not quoted there. It says only that 3 it -- it -- 4 They expressly acknowledge that -- 5 that -- 6 MALE JUSTICE: Mapping in the database 7 does not ensure that the related device is currently 8 running, only that it's there. 9 MR. WODARSKI: That -- that's right. 10 And so this -- it's not just -- 11 The board quoted it that it doesn't 12 ensure part. But, you know, what wasn't quoted by the 13 board is equally as important right below that. 14 The system is only that a 15 departure claims a particular IP address 16 and that current -- that's currently valid 17 IP mapping. 18 MALE JUSTICE: Um-hum. 19 MR. WODARSKI: In other words -- 20 MALE JUSTICE: Um-hum. 21 MR. WODARSKI: -- I've registered a 22 name. I've registered an IP address. They're mapping 23 together. 24 MALE JUSTICE: I understand that. 25 MR. WODARSKI: So, yeah. I --</p>	<p style="text-align: right;">27</p> <p>1 limitation is satisfied by something that only asks for 2 registration information regardless of its accuracy. 3 You have to understand the context of 4 that. When they -- when they had the SIPNET appeal, 5 when this Court had the SIPNET appeal, it knew the 6 exact same pieces of art were before it -- before the 7 board below, presented in the exact same way. And so 8 those -- 9 FEMALE JUSTICE: And wasn't -- wasn't 10 SIPNET -- wasn't their analysis there an anticipation 11 analysis and not an obviousness analysis, or am I 12 wrong about that? 13 MR. WODARSKI: Your Honor, as I 14 recall -- 15 FEMALE JUSTICE: With respect to 16 these -- 17 MR. WODARSKI: -- it was -- it was both, 18 but I -- 19 FEMALE JUSTICE: Both were in the case, 20 but I think the -- the claims we're talking about were 21 anticipation. I may be wrong. 22 You don't recall? 23 MR. WODARSKI: Fair. 24 The take-away point is -- is literally 25 this is simple: What they said is the -- the proper</p>
<p style="text-align: right;">26</p> <p>1 But I think, Your Honor, I -- I don't 2 have something at the ready that says "currently 3 running" is -- is synonymous with "online status" 4 for -- 5 MALE JUSTICE: (Unintelligible.) 6 MR. WODARSKI: But no one has ever 7 disputed that, and I don't think you really could. 8 So if I could just return briefly just to 9 the three points I want to make sure are clear. 10 Opposing counsel said that the board got 11 it wrong because they said it's some notion of a 12 question of timing. I just want to be clear. As I've 13 just run through with you, it was a question of the 14 system not doing it at all. And so it was very clear 15 that in this example the board clearly and 16 unambiguously followed the construction and the 17 guidance provided by the SIPNET court. 18 And three things are dispositive of why 19 we know that. One, the -- the SIPNET opinion gives us 20 the construction, an explanation of what the query must 21 do to accomplish something under that construction: It 22 must make the determination of online status at the 23 time of the query, and then it goes on to say it's -- 24 and this is very important. It goes on to say it would 25 not be a reasonable construction to find that the</p>	<p style="text-align: right;">28</p> <p>1 construction of the claim is -- is this: "Is 2 connected" means is connected at the time of the query. 3 And for whatever might satisfy that going forward, it 4 cannot be the only thing that these prior art systems 5 do. 6 In other words, the -- the systems 7 acknowledge expressly that all they do is map an IP 8 address to a name, and that's the only information 9 they'll provide. And the SIPNET decision says, under 10 our construction, for whatever might in the future meet 11 or not meet that limitation, this type of thing cannot 12 do that. 13 And that, Your Honor, I believe is 14 dispositive of the issue you have here before you, and 15 that's why I think knowing that they've tried to 16 construct this argument that somehow the board 17 ingrafted a limitation at our invitation. It -- it's 18 simply wrong, Your Honor. 19 As a matter of fact, if -- if you look at 20 it, the board was literally just applying SIPNET 21 because it had to. As to these references, it not only 22 provided the proper construction, but it, essentially, 23 gave guidance that must be followed and controls the 24 outcome. 25 FEMALE JUSTICE: You've boxed yourself</p>

<p style="text-align: right;">29</p> <p>1 into a pretty narrow infringement argument, though, 2 haven't you, with this claim construction? 3 In other words, a system that only does 4 what -- what NetBIOS or WINS did wouldn't infringe, 5 right? 6 MR. WODARSKI: A system does what 7 NetBIOS and WINS do does not meet the limitation of 8 "is connected," Your Honor; that's correct. 9 FEMALE JUSTICE: Okay. 10 MR. WODARSKI: I -- I don't think -- 11 other than that, I -- 12 In other words, I know that that's not 13 what satisfies the claim. I don't think it speaks to 14 whatever might satisfy the claim. 15 FEMALE JUSTICE: Okay. 16 MR. WODARSKI: But, Your Honor, just -- 17 I just want to be clear with this issue of the board. 18 I think the -- you fairly appreciate this 19 already, but to this notion that the board somehow 20 adopted their conclusions or contentions about how it 21 operates, it -- it's apparent from the record that -- 22 with respect to 469, claim 1 -- is-connected limitation 23 isn't even present in that claim. Those were claims 24 where the discussion was about other grounds, and those 25 claims were canceled.</p>	<p style="text-align: right;">31</p> <p>1 FEMALE JUSTICE: But -- but in -- in our 2 prior opinion -- 3 MR. JACOB: Yes. 4 FEMALE JUSTICE: -- we expressly stated 5 that a query that asks only for registration 6 information does not satisfy the limitations of the 7 claim. 8 MR. JACOB: That's correct. 9 FEMALE JUSTICE: And do you dispute that 10 NetBIOS and WINS only asks for registration 11 information? 12 MR. JACOB: We absolutely do. And I 13 just want to make this perfectly clear, Your Honor. 14 When Straight Path was asked -- below, Straight 15 Path -- this was Straight Path's position about what 16 the embodiment is of the limitation that we are 17 discussing, the is-connected-to-the-network 18 limitation. And I'm quoting now. This is appendix 19 13-98. 20 To determine whether a process is 21 currently connected to the computer 22 network at the time of the query, the 23 specification describes that the 24 connection server performs at least a 25 two-step protocol to, one, track when the</p>
<p style="text-align: right;">30</p> <p>1 And so I think (unintelligible). 2 FEMALE JUSTICE: Thank you. 3 MR. WODARSKI: Thank you. 4 MR. JACOB: Thank you, Your Honors. 5 I would like to focus on two questions 6 that were raised to Straight Path. 7 The first question was Straight Path was 8 asked straight out, is a hundred percent perfect 9 accuracy required, and today Straight Path tried to 10 argue, oh, this isn't about accuracy. This -- that's 11 not the limitation that is at issue. 12 But what I'd like to do is read what 13 Straight Path actually told the board and what Straight 14 Path previously told the federal circuit. 15 At oral argument in the SIPNET appeal, 16 the Court specifically asked whether Straight Path's 17 view, and I'm quoting: 18 -- view is that the database must 19 always be accurate, and that's the 20 difference between the patented -- 21 patented invention and the prior art, 22 correct? 23 And Straight Path responded: 24 That's correct, Your Honor. 25 That's at 806 (unintelligible) 3rd --</p>	<p style="text-align: right;">32</p> <p>1 process connected to the network, and, 2 two, track when the process disconnects 3 from the computer network. 4 That is exactly, exactly what the board 5 found that the prior art does in this case. 6 Chief Justice asked Straight Path, what 7 are the embodiments? What are the embodiments? And 8 Straight Path said, well, we don't have to answer that 9 question. Straight Path has already answered it below. 10 They have answered what specific technology is required 11 to meet this limitation, and the board found that the 12 prior art actually performs those limitations exactly 13 as described by Straight Path. That's the important 14 point here. 15 Today Straight Path tried to argue for -- 16 for the first time in these proceedings, well, perfect 17 accuracy might not be required. Maybe the patent could 18 make some errors. It only has to be designed to be 19 accurate. 20 This shifting accuracy standard is -- is 21 absolutely crucial, Your Honor. Straight Path is not 22 permitted to avoid the prior art by arguing for perfect 23 accuracy before the board, and then in later 24 proceedings attempt to dis -- 25 FEMALE JUSTICE: But that's not --</p>

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